REMARKS

No claims have been amended, added, or canceled. Claims 1-22 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 102(a) Rejection:

The Examiner rejected claims 1 and 12 under 35 U.S.C. § 102(a) as being anticipated by PatchLink Corporation ("PatchLink ®Update™ 4.0 White Paper Cross-Platform Security Patch Management,") (hereinafter "PatchLink"). Applicant traverses the rejection for at least the following reasons.

Claim 1

In regard to claim 1, the cited art fails to teach deploying a patch package on a first computer running a first type of operating system, wherein the patch package comprises a patching mechanism and a first set of one or more new code components, <u>and wherein the patching mechanism is also executable on a second computer running a second type of operating system.</u> The Examiner cites the Abstract of PatchLink, which discloses "patch detection and deployment software available for managing these heterogeneous network environments." The Examiner also cites page 8 of PatchLink, which discloses a "Patch Compliance Assurance Mechanism" and the distribution of software. As described in more detail below, none of the cited portions of PatchLink teaches deploying a patch package that includes the particular patching mechanism specified by the limitations of claim 1. Furthermore, the Examiner fails to clearly specify the particular portion of PatchLink that he considers to be equivalent to the claimed "patching mechanism." **According to MPEP 707.07(d), the ground of rejection in an Examiner's action should be "fully and clearly stated."** Accordingly, Applicant requests that the Examiner clearly specify the specific element of PatchLink that he considers to be equivalent to the claimed "patching mechanism."

First, PatchLink fails to teach deploying a patch package that includes a patching mechanism that is executable on a first computer running a first type of operating system and on a second computer running a second type of operating system. **In fact, PatchLink teaches the opposite.** More specifically, PatchLink teaches a system where patches are deployed on a platform-specific basis. For instance, PatchLink teaches:

> Intelligent Multiple Patch Deployment (IMPD): IMPD technology allows the ***proper patches*** to be deployed on the ***correct* operating system**. For example, Microsoft may have a bulletin for MSxx-xxx that has several different patches for various platforms. In this situation, administrators can simply select MSxx-xxx for deployment and then select all required computers regardless of the OS. **The IMPD ensures that the patch gets installed on the *proper* operating system — the patch for the 9x platform would install on the 9x OS, the patch for NT would install on the NT OS, the patch for W2K would install on the W2K OS, and so on.** This unique feature is used to speed up the patch deployment process so administrators do not have to determine which patch is for which platform. (PatchLink, page 9, second paragraph from bottom; emphasis added).

PatchLink also teaches that the element that installs the patch is part of the patch: "Each patch has an installer, prerequisite signature and fingerprint identification" (page 2, last paragraph; page 15, last paragraph). Since PatchLink teaches a.) a system where patches are deployed on a platform-specific basis and b.) the element that installs PatchLink's patches is part of the patch itself, **the elements that installs PatchLink's patches are also deployed on a platform-specific basis**. Accordingly, PatchLink clearly fails to teach deploying a patch package that includes a patching mechanism that is executable on a first computer running a first type of operating system and on a second computer running a second type of operating system.

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Since

PatchLink fails to teach deploying a patch package that includes a patching mechanism that is executable on a first computer running a first type of operating system and on a second computer running a second type of operating system, PatchLink cannot be said to anticipate Applicant's invention as claimed.

Furthermore, the Examiner presumably considers the Patch Compliance Assurance Mechanism (PCAM) of PatchLink as being equivalent to the claimed "patching mechanism." **However, the PCAM of PatchLink is not executable on a first computer system running a first type of operating system and a second type of computer system running a second type of operating system, as recited in Applicant's claim.** In fact, the PCAM software is not software deployed as part of a patch package. Instead, PatchLink teaches that the PCAM is a server-side feature (*see e.g.*, page 6, fourth line from bottom) of the PatchLink Update Server (*see e.g.*, page 3, item b). Presumably the Examiner considers the clients of PatchLink to be equivalent to the "first computer" and "second computer" of Applicant's claim; however, nowhere does PatchLink teach that the PCAM is a patching mechanism that is executable on multiple clients that run different operating systems.

Additionally, with respect to the Examiner's reliance on "patch detection and deployment software available for managing these heterogeneous network environments" (Abstract, PatchLink), **Applicant notes that nothing about "managing []heterogeneous network environments" inherently includes a method according to the underline specific limitations of claim 1.** For example, one of ordinary skill in the art would recognize that "managing [a] heterogeneous network environment" could include developing separate management components tailored to each constituent client of such a heterogeneous network environment. Accordingly, PatchLink's disclosure of "managing []heterogeneous network environments" does not inherently include a method according to the specific limitations of claim 1.

Finally, with respect to the Examiner's reliance on "Software distribution" and "software packages" of page 8 of PatchLink, **Applicant notes that this portion of**

PatchLink refers to "software packages," not patch packages (much less the specific patch packages of claim 1). For example, nowhere does PatchLink teach that "software packages" (e.g., Office 2000, page 8, third line from bottom) include a patching mechanism configured accord to the specific limitations of claim 1. Nothing about a software package inherently includes a patching mechanism, much less the specific patching mechanism of claim 1.

Thus, for at least the reasons presented above, the rejection of claim 1 is unsupported by the cited art, and removal thereof is respectfully requested. Similar remarks apply to claim 12.

Section 103(a) Rejection:

The Examiner rejected claims 1-2, 5, 11-13, 16 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Chamberlain et al. (U.S. Patent 6,434,744) (hereinafter "Chamberlain") in view of Curtis (U.S. Patent 6,601,236) (hereinafter "Curtis"), claims 3, 4, 6, 7, 15, 17 and 18 as being unpatentable over Chamberlain in view of Curtis and further in view of Moshir et al. (U.S. Publication 2002/0100036) (hereinafter "Moshir"), claims 8-10 and 19-21 as being unpatentable over Chamberlain in view of Curtis, Moshir and further in view of Taylor (U.S. Patent 6,161,218). Applicant respectfully traverses these rejections for at least the following reasons.

Claim 1

In regard to claim 1, the cited art fails to teach or suggest <u>deploying a patch</u> <u>package</u> **on a first computer running a first type of operating system,** <u>wherein the</u> <u>patch package</u> *comprises* <u>a patching mechanism</u> *and* <u>a first set of one or more new</u> <u>code components.</u> **In fact, the cited art explicitly does not teach deploying such a patch package.** The Examiner cites column 5, lines 10-12 and lines 19-23 of Chamberlain. These portions of Chamberlain (even when considered with the teachings of Curtis) fail to teach the aforesaid limitations of Applicant's claim. In fact, these

portions of Chamberlain support Applicant's assertion that the cited art explicitly does not teach deploying the particular type of patch package recited in Applicant's claim. For example, the cited portion of Chamberlain teaches:

> Briefly described, the present invention provides a mechanism by which the launching of a patch file, termed a "patch package," is passed to the installer program and the installer program takes control of applying the patch. (column 5, lines19-23, emphasis added)

The cited art clearly teaches a system where an installer program applies a patch; presumably the Examiner considers the installer program of the cited art to be equivalent to Applicant's claimed "patching mechanism." The Examiner also presumably considers the patch of the cited art to be equivalent to the claimed first set of one or more new code components. For this interpretation of the cited art to teach the aforesaid limitation of Applicant's claim, the cited art would have to at least teach or suggest deploying a patch package that comprises the installer program and the patch. However, the cited art fails to teach or suggest deploying such a patch package. Instead, the cited art teaches providing a patch package (see e.g., Chamberlain, Fig. 3, item 301), which does not include the installer program, to a computer that already includes the installer program (see e.g., Chamberlain, Fig. 3, item 201). Accordingly, the cited art fails to teach or suggest deploying a patch package on a first computer running a first type of operating system, wherein the patch package comprises a patching mechanism and a first set of one or more new code components. Furthermore, Curtis fails to reconcile the deficiencies of Chamberlain.

Furthermore, even were the teachings of the cited art combined, the resulting combination would not teach the specific limitations of Applicant's claim. At best, the proposed combination would result in a system where the installer program of Chamberlain (see e.g., Chamberlain, Fig. 3, item 201) were modified according to the install program 17 of Curtis (see e.g., Curtis, column 13, lines 29-47). **However, such combination would only result in a modified installer program, not the deployment of a patch package that includes both a patching mechanism and a first set of one or more new code components.** In fact, neither Chamberlain nor Curtis mention anything at all about such a patch package, much less deploying such a patch package.

Furthermore, the Examiner has not provided a proper reason as to why one of ordinary skill in the art would have combined the teachings of the cited references in a manner that would result in Applicants' claimed invention. The Examiner asserts:

> Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify teaching of Chamberlain with the teachings of Curtis to include the patching mechanism is also executable on a second computer running a second type of operating system in order to provide a method using a cross-platform installer install programs across multiple operating systems and simply interpreted as patch mechanism executing patches to a second computer which is running on different type of operating system. (emphasis added)

The Examiner's reasoning is completely circular and conclusory. More specifically, the Examiner's proposed reason to combine the references (i.e., "in order to provide a method using a cross-platform installer") is actually a feature of Curtis (*see e.g.,* column 13, lines 29-47 of Curtis), not a reason to combine the teachings of Curtis with the teachings of Chamberlain. As the Examiner is certainly aware, "'[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness'" (emphasis added). *KSR v. Teleflex*, 550 U.S. ___, 82 USPQ2d 1385, 1396. Since the Examiner has not presented such reasoning, the Examiner's rejection is improper.

Thus, for at least the reasons presented above, the rejection of claim 1 is unsupported by the cited art, and removal thereof is respectfully requested. Similar remarks apply to claim 12.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejection has been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time. Applicant reserves the right to present additional arguments.

CONCLUSION

Applicant submits the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-54200/RCK.

Respectfully submitted,

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